

**Before the  
Federal Communications Commission  
Washington, D.C.**

In the Matter of	)	
	)	
Partitioning, Disaggregation, and Leasing	)	WT Docket No. 19-38
of Spectrum	)	

**REPLY COMMENTS OF AT&T**

AT&T Services, Inc., on behalf of its wireless affiliates, provides these reply comments on the Notice of Proposed Rulemaking (“Notice”) issued by the Federal Communications Commission (the “Commission”) pertaining to use of partitioning, disaggregation, and leasing to enable spectrum access by small and rural carriers.<sup>1</sup>

**I. INTRODUCTION AND SUMMARY.**

The Commission released the Notice to explore the use of partitioning and disaggregation of spectrum licenses and spectrum leasing as means to increase services in rural areas and spectrum access by small carriers, as required by the MOBILE NOW Act.<sup>2</sup> AT&T supports the Commission’s efforts to make spectrum available in unserved and underserved areas and supports those comments urging the Commission to meet those goals in part by allowing for recombining of partitioned and/or disaggregated licenses. Preventing licensees from recombining licenses undermines the Commission’s goals and discourages secondary market transactions in the first place. Moreover, AT&T supports those comments urging the Commission to improve its forms

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<sup>1</sup> *Notice of Proposed Rulemaking*, FCC 19-22, Partitioning, Disaggregation, and Leasing of Spectrum, WT Docket No. 19-38 (2019) (“*Notice*”).

<sup>2</sup> Making Opportunities for Broadband Investment and Limiting Excessive and Needless Obstacles to Wireless Act, Pub. L. No. 115-141, Division P, Title VI, § 601 *et seq.* (2018).

and databases. Updates to those systems would promote secondary market transactions, simplified processes, and transparency.

## **II. DISCUSSION.**

### **A. AT&T Agrees with Commenters that the Commission Should Allow for Recombining of Partitioned and/or Disaggregated Licenses.**

AT&T agrees with commenters that support allowing licensees to recombine their previously partitioned or disaggregated licenses. CTIA comments that permitting licensees to recombine licenses would encourage them “to lease or sell spectrum in the first instance” while also reducing their administrative burdens.<sup>3</sup> Google agrees, adding that increased costs from administrative requirements for multiple partitioned or disaggregated licenses, such as construction requirements, renewal showing, continuous service requirements, and maintaining updated license information, “discourages disaggregation in the first place.”<sup>4</sup> As The R Street Institute explains, “[a]llowing market transactions, in any reasonable sense, means allowing these transactions to go both ways. Permitting free reaggregation alongside disaggregation would not only allow more flexibility in the use of spectrum over time, it would also incentivize initial licensees to participate in the secondary market in the first place.”<sup>5</sup>

There are no unsurmountable impediments to the Commission providing licensees with this flexibility. No Commission rules prohibit the practice of recombining of partitioned and/or disaggregated licenses. And, as the Commission has recognized, the recombining of partitioned

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<sup>3</sup> Comments of CTIA – The Wireless Association, WT Docket No. 19-38, at 13 (filed June 3, 2019) (“CTIA Comments”).

<sup>4</sup> Comments of Google LLC, WT Docket No. 19-38, at 15 (filed June 3, 2019) (“Google Comments”).

<sup>5</sup> Comments of The R Street Institute, WT Docket No. 19-38, at 4 (filed May 31, 2019) (“R Street Comments”).

and/or disaggregated license can be performed “by Commission staff under current rules and licensing systems.”<sup>6</sup> In fact, as CTIA observes, Commission staff has recombined licenses for AT&T and Sprint on multiple occasions.<sup>7</sup>

The Commission questions whether allowing licensees to recombine partitioned and/or disaggregated licenses would result in the avoidance of construction requirements or “laundering” of a licensee’s regulatory obligations.<sup>8</sup> Picking up that theme, some commenters discourage the Commission from allowing reaggregation and/or propose allowing reaggregation only after a licensee meets its construction obligation<sup>9</sup> or conditioned on building 100% of the licensed area.<sup>10</sup> These arguments are misplaced. Licensees of recombined licenses must still meet the original construction obligations applicable to the service. Those licensees do not avoid construction requirements any more than other licensees holding licenses in the same service that have not been partitioned or disaggregated or a licensee that leased the spectrum instead of partitioning or disaggregating a license. In all cases, the licensees would be subject to the identical (i.e., the original) construction obligations.

Moreover, refusing to reconstitute partitioned and/or disaggregated licenses or delaying a recombination until a licensee has met the construction obligations for each partitioned and/or disaggregated license would undermine the Commission’s long-stated goal in partitioning and

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<sup>6</sup> *Amendment of Parts 1, 22, 24, 27, 74, 80, 90, 95, & 101 to Establish Uniform License Renewal, Discontinuance of Operation, and Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Radio Services*, Second Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 8874, 8907 ¶88 (2017) (“*WRS Reform Order*”).

<sup>7</sup> CTIA Comments, at 15.

<sup>8</sup> Notice, ¶29.

<sup>9</sup> R Street Comments, at 4.

<sup>10</sup> Google Comments, at 15.

disaggregation contexts—"to ensure that the spectrum is used to the same degree that would have been required had the partitioning or disaggregation transaction not taken place."<sup>11</sup> The Commission has observed that mandating separate construction obligations on disaggregated licenses, which is effectively the same as conditioning reaggregation on completion of license build-out, "could inadvertently discourage disaggregation by imposing a heavier regulatory burden on parties who choose to disaggregate than was required of the original licensee"<sup>12</sup> The Commission reiterated these principles as recently as 2017, when it recognized that independent performance obligations imposed on both parties to a partition or disaggregation "might, under certain circumstances, unnecessarily impose additional construction requirements . . . that would not have existed had the license not been partitioned or disaggregated" and instead, decided to allow participants to share construction requirements to "ensure[] that no two parties to a partitioning or disaggregation arrangement will be required to build out more than 100 percent of the requirement for any particular geographic area or spectrum block."<sup>13</sup>

For these reasons, the FCC should allow licensees to reconstitute partitioned and/or disaggregated licenses, up to the size of the original market area. AT&T acknowledges that allowing licensees to recombine licenses might increase the administrative burdens on Commission staff and compete with other filings for staff time.<sup>14</sup> However, "those one-time agency costs should be lower than the ongoing costs of administering multiple licenses."<sup>15</sup> Over

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<sup>11</sup> *Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Service Licensees*, WT Docket No. 96-148, Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21831, 21864 (1997).

<sup>12</sup> *Id.* at 21865 (emphasis added).

<sup>13</sup> *WRS Reform Order*, 32 FCC Rcd at 8904-05 (emphasis added).

<sup>14</sup> *Notice*, at ¶30

<sup>15</sup> Google Comments, at 14-15.

the long term, reconstituting multiple licenses into the original single license, such as merging four WCS licenses into one surviving license, would create an exponential reduction in administrative burden by eliminating application filings for performance showings, renewal showings, continuous service requirements, license updates, and the like, for the cancelled licenses. Moreover, adopting a simplified format for recombining previously partitioned and/or disaggregated licenses and improving Commission systems, as discussed below, could minimize the strain on administrative resources. In the short term, the Commission could substantially reduce the potential for a flood of applications to recombine licenses by requiring a heightened showing for proposed license combinations that do not reconstitute the original license area.

**B. Updating the Commission’s Forms and Databases Will Promote Secondary Market Transactions.**

AT&T agrees with CTIA that the Commission can facilitate secondary market spectrum transactions – and promote many other public interest benefits – by upgrading its online forms and databases.<sup>16</sup> Most spectrum transactions are processed through the Universal Licensing System (“ULS”) on Forms 603 and 608. Neither Form 603 nor Form 608 has been significantly updated since first introduced. ULS, which recently celebrated its 21<sup>st</sup> birthday,<sup>17</sup> contains a treasure trove of useful data regarding spectrum licensing and usage but can be improved to be more streamlined and user-friendly for licensees and the general public alike.

There are three key benefits the Commission can achieve by performing long-overdue updates to ULS and its associated forms. First, the Commission can ensure that parties to

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<sup>16</sup> CTIA Comments, at 17-22.

<sup>17</sup> ULS was first used for post-auction licensing in December 1997, with additional functionality added throughout 1998. *In the Matter of Biennial Regulatory Review – Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 907, and 101 of the Commission’s Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services*, Report and Order, 13 FCC Rcd 21027 (1998).

secondary market transactions are able to take advantage of all the rights and opportunities provided to them by the Commission's rules. As CTIA notes, there are several ways in which ULS (in particular Form 608) does not have the full functionality contemplated by the Commission's rules, which lengthens the processing time for certain transactions and requires parties to compensate by employing burdensome workarounds.<sup>18</sup> Second, the Commission can upgrade and improve its online forms to streamline actions that are clearly in the public interest, such as reaggregation of previously-disaggregated licenses or spectrum swaps that do not constitute a spectrum aggregation event for any party.<sup>19</sup> Third, by improving ULS the Commission can use its data to support public resources that are more user-friendly and that promote transparency regarding spectrum licensing.<sup>20</sup>

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<sup>18</sup> CTIA Comments, at 18-20.

<sup>19</sup> *Id.*, at 17-18, 20.

<sup>20</sup> *Id.*, at 20-22.

### III. CONCLUSION

By taking the actions discussed above, the Commission can advance the partitioning, disaggregation, and leasing of spectrum in rural areas, reduce administrative burdens for licensees generally, and promote transparency to the benefit of licensees and the general public.

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Respectfully submitted,



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